

David H. Bowser, OSB #012098
david.bowser@jordanramis.com
Jamie D. Howsley, OSB #012969
jamie.howsley@jordanramis.com
JORDAN RAMIS PC
Two Centerpointe Dr., 6th Floor
Lake Oswego, Oregon 97035
Telephone: (503) 598-7070
Facsimile: (503) 598-7373

Attorneys for Plaintiff Newberg Crestview, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORLAND DIVISION

NEWBERG CRESTVIEW, LLC, an Oregon
limited liability company,

Plaintiff,

v.

CITY OF NEWBERG, a municipal entity,

Defendant.

Case No. _____

**COMPLAINT FOR
UNCONSTITUTIONAL TAKING
UNDER U.S. CONSTITUTION AND
OREGON CONSTITUTION
(42 U.S.C. § 1983)**

JURY TRIAL DEMANDED

COMES NOW the above-named Plaintiff, Newberg Crestview, LLC (“Plaintiff”) by and through its attorneys of record, David H. Bowser and Jamie D. Howsley of Jordan Ramis, PC, and together bring this Complaint against the above-named Defendant, City of Newberg, a municipal entity, and in support thereof allege the following:

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INTRODUCTION

1.

Plaintiff brings this action under the Takings Clauses of the United States and Oregon Constitutions, and 42 U.S.C. §1983, challenging Defendant's acts, orders, policies, practices, customs, and procedures, which deprived Plaintiff of its property without just compensation.

2.

As set forth in this Complaint, the acts, orders, policies, practices, customs, and procedures of Defendant were the cause of, and the moving force behind, the constitutional violations in this case and caused the damages that Plaintiff seeks in this action.

3.

Plaintiff seeks a judgment awarding damages for the taking of Plaintiff's property without just compensation.

4.

Plaintiff also seeks an award of its reasonable costs of litigation, including attorneys' fees, expert fees, and costs pursuant to 42 U.S.C. §1988, and an award of costs and disbursements and reasonable attorney fees at trial pursuant to ORS 20.085, and other applicable laws.

JURISDICTION AND VENUE

5.

This action arises under the Constitution and laws of the United States and of the State of Oregon, including the Fifth Amendment (US), Article 1 Section 18 (OR), as well as under 42 U.S.C. §1983. Jurisdiction is conferred on this Court pursuant to Article III of the United States Constitution, 28 U.S.C. §§1331 (Federal Question) and 1343 (Civil Rights and Elective Franchise).

6.

This Court has supplemental jurisdiction regarding state claims pursuant to 28 U.S.C. §1367 as such claims are so related to claims in the action within original jurisdiction that they form part of the same case or controversy.

7.

Plaintiff's claims for damages are authorized under 42 U.S.C. §1983.

8.

Venue is proper under 28 U.S.C. §1391(b)(1) and (2) because Defendant resides in this District and all parties are Oregon residents, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

PLAINTIFF

9.

Plaintiff Newberg Crestview, LLC is an Oregon limited liability company with offices in Clackamas County, Oregon. It owns and is developing property in the City of Newberg commonly known as Crestview Crossing for primarily residential and some commercial use, and has incurred financial losses caused by Defendant.

DEFENDANT

10.

Defendant City of Newberg, an Oregon municipal corporation, made the land use decision and subsequent decisions in this matter regarding Crestview Crossing pursuant to state law, custom and usage, and local ordinances, custom and usage, thereby acting under the color of state law in all relevant matters. The City is a person under 42 U.S.C. §1983.

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UNCONSTITUTIONAL LAND USE EXACTIONS

11.

The following conditions were included in the Planning Commission Order 2019-10 issued by Defendant for Crestview Crossing in land use case number PUD18-0001/CUP18-0004 (the “City Order”):

- a. Jory Road street improvements;
- b. Crestview Drive street improvements;
- c. sidewalk and bike lane on Hwy 99W;
- d. upsizing sanitary sewer pipes; and
- e. surplus stormwater capacity.

12.

As a result of Defendant’s unconstitutional conduct and the City Order, Plaintiff’s property was taken by Defendant with no just compensation paid to Plaintiff.

GENERAL ALLEGATIONS

13.

Plaintiff has not received just compensation from Defendant for the taking of its property.

14.

The City Order is being enforced by Defendant in violation of Plaintiff’s rights as set forth herein.

15.

Plaintiff is being materially affected by the City Order in that it is being forced to construct public improvements in the public right-of-way without just compensation in violation of its federal and state constitutional rights.

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CLAIM I – FEDERAL TAKINGS

(Fifth Amendment, United States Constitution; 42 U.S.C. §1983)

16.

Plaintiff hereby incorporates by reference paragraphs 1 through 15 as if fully restated herein.

17.

Defendant's actions under color of state law are a seizure of Plaintiff's property without just compensation, all in violation of the Fifth Amendment of the United States Constitution.

18.

The Fifth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, is a constitutional provision and right requiring the payment of just compensation upon a taking of private property by Defendant.

19.

The City Order requires Plaintiff to construct public improvements that exceed the roughly proportional impact of Plaintiff's Crestview Crossing subdivision, requiring the payment of just compensation upon a taking of private property by Defendant.

20.

The City Order interfered with Plaintiff's distinct, investment-backed expectations as to their businesses and property, requiring the payment of just compensation upon a taking of private property by Defendant. As outlined above, Defendant has taken Plaintiff's property for public use without providing just compensation.

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21.

Defendant has provided no compensation to Plaintiff for the requirement to construct these public improvements, thereby depriving Plaintiff of its constitutional rights in violation of the Fifth Amendment of the United States Constitution.

22.

As a result of Defendant's actions and failure to pay just compensation, Plaintiff has been injured and suffered damages in an amount to be determined at trial, including:

- a. \$498,717 for Jory Road street improvements;
- b. \$746,549 for Crestview Drive street improvements;
- c. \$124,757 for the sidewalk and bike lane on Hwy 99W;
- d. \$69,435 for upsizing sanitary sewer pipes; and
- e. \$21,901 for surplus stormwater capacity.

Plaintiff is owed a total of \$1,461,359 for the unconstitutional taking of its property without compensation. Plaintiff is entitled to its reasonable costs of litigation, including attorneys' fees, expert fees, and costs, pursuant to 42 U.S.C. §1988 and other applicable laws.

CLAIM II – OREGON TAKINGS

(Article I, §18, Oregon Constitution)

23.

Plaintiff hereby incorporates by reference paragraphs 1 through 22 as if fully restated herein.

24.

Defendant's actions under color of state law are a taking of Plaintiff's property without just compensation, all in violation of the Article 1, §18 of the Oregon Constitution.

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25.

As outlined above, Defendant has taken Plaintiff's property for public use without providing just compensation.

26.

Article I, §18 of the Oregon Constitution is a provision and right requiring the payment of just compensation upon a taking of private property by Defendant.

27.

The City Order required Plaintiff to construct public improvements that exceed the roughly proportional impact of Plaintiff's Crestview Crossing subdivision without offering any roughly proportional compensation for these takings.

28.

Defendant has provided no compensation to Plaintiff for the taking of its property, thereby depriving Plaintiff of its constitutional rights in violation of Article I, §18 of the Oregon Constitution.

29.

Defendant's City Order interfered with Plaintiff's distinct, investment-backed expectations as to its business and property.

30.

As outlined above, Defendant has taken Plaintiff's property for public use without providing just compensation.

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31.

As a result of Defendant's actions and failure to pay just compensation, Plaintiff has been injured and suffered damages in an amount to be determined at trial, including:

- a. \$498,717 for Jory Road street improvements;
- b. \$746,549 for Crestview Drive street improvements;
- c. \$124,757 for the sidewalk and bike lane on Hwy 99W;
- d. \$69,435 for upsizing sanitary sewer pipes; and
- e. \$21,901 for surplus stormwater capacity.

Plaintiff is owed a total of \$1,461,359 for the unconstitutional taking of its property. Plaintiff is entitled to its costs and disbursements and reasonable attorney fees at trial and on appeal pursuant to ORS 20.085, and other applicable laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Newberg Crestview, LLC prays for a judgment in favor of Plaintiff and against Defendant as follows:

- 1. For a finding that Defendant has violated Plaintiff's constitutional rights under the Federal and State Constitutions by taking its property for public use without just compensation;
- 2. Awarding damages as proven at trial, currently estimated to be \$1,461,359, for the value of the property taken by Defendant without compensation, including interest;
- 3. Awarding any and all damages and other available damages under federal and state law as applicable, including, but not limited to, an award for nominal damages;
- 4. Awarding Plaintiff its reasonable attorney fees, experts fees, costs, and expenses pursuant to 42 U.S.C. §1988, ORS 30.085, and other applicable law; and
- 5. Grant such other and further relief as is just and appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED this 29th day of August, 2022.

JORDAN RAMIS PC

By: s/ David H. Bowser

David H. Bowser, OSB #012098

david.bowser@jordanramis.com

Jamie D. Howsley, OSB #012969

jamie.howsley@jordanramis.com

Telephone: (503) 598-7070

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